## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

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ORDER

This lawsuit arises under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401 et seq. Beverly Hart filed this lawsuit on November 14, 2003, on behalf of her daughter, Carol Hart. She alleges that the defendant, Shelby County School District, has violated the IDEA by denying Carol Hart a free and appropriate public education ("FAPE") by failing to include her in the regular education curriculum.

Beverly Hart filed this action without legal representation.

Upon motion for appointment of counsel filed by Beverly Hart when she filed the lawsuit and after much difficulty in procuring probono counsel, counsel was appointed to represent Carol Hart but subsequent events led to the withdrawal of the appointed counsel. Beverly Hart filed a second motion for appointment of counsel on

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March 16, 2005, which motion was denied. At a status conference before Judge Donald on May 23, 2005, Beverly Hart renewed her motion ore tenus for appointment of counsel. The court granted reconsideration of the order denying the motion for appointment of counsel and took it under advisement. The motion is still pending. The court has not been successful in locating new pro bono counsel.

In Cavenaugh v. Cardinal Local Sch. Dist., 409 F. 3d 753 (6th Cir. 2005), decided May 18, 2005, the Sixth Circuit held that "non-lawyer parents may not represent their child in an action brought under the IDEA." Id. at 756. The court went on to state that a child's right to FAPE is that of the child's alone and not the parents, id. at 757, and therefore the parents could not represent the child in a claim for denial of FAPE.

Based on Cavenaugh, Beverly Hart cannot represent Carol Hart in this matter. Beverly Hart is given two weeks, until Thursday, November 3, 2005, at 10:00 a.m. to retain counsel for Carol Hart. Meanwhile, Beverly Hart shall not file any more motions, pleadings, memoranda, attachments, letters, or copies of letters in this cause, and the clerk is directed not to accept for filing any further matters on behalf of Carol Hart unless filed by an attorney licensed to practice in this district.

IT IS SO ORDERED this 21st day of October, 2005.

BERNICE B. DONALD

UNITED STATES DISTRICT JUDGE



## **Notice of Distribution**

This notice confirms a copy of the document docketed as number 70 in case 2:03-CV-02845 was distributed by fax, mail, or direct printing on October 28, 2005 to the parties listed.

Timothy W. Smith LAW OFFICE OF TIMOTHY W. SMITH 2670 Union Extd. Ste. 1200 Memphis, TN 38112

Beverly Carol Hart 1614 Sorghum Mill Cordova, TN 38016

Honorable Bernice Donald US DISTRICT COURT